IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 8636 of 2005

Between:

D. Kumara Swamy, S/o. Komuraiah
R/o. Garmillapally Village, Zaffergadh (M),
Warangal District.

..... PETITIONER

AND

1 The District Collector, (Panchayat Wing) Warangal,
2 The District Panchayat Officer, Warangal,
3 The Mandal Parishat Development Officer, M.P. Zaffergadh,

Warangal District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of Mandamus or any other appropriate Writ, order or Direction, declaring the impugned order passed by the 1st respondent in his proceedings No. 477/2003/A2/A3 dt. 18-3-2005 is illegal arbitrary, void abinitio and violative of article 14 & 21 of Constitution of India besides violative of Principles of natural justice and consequently direct the respondents to refer the dispute to the competent District Court for decision as per law and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice and equity and in the circumstances of the case.

Counsel for the Petitioner: MR.A.RAVINDER

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court at the admission stage made the following :

ORDER:

This writ petition is filed aggrieved by the order passed by the first respondent – The Collector (Panchayat wing), Warangal District dated 18-03-2005 disqualifying the petitioner with immediate effect from the post of Upa-Sarpanch of Garmillapally Gram Panchayat under Section 19(3) read with Section 22 of A.P. Panchayat Raj Act, 1994 (for short, 'the Act') for having given birth to third child after specified date and thereby directing the Extension Officer to intimate the casual vacancy for taking necessary further action.

The petitioner was elected as Upa-Sarpanch of Garmillapally Gram Panchayat, Zaffergadh Mandal, Warangal District in the year 2001. It appears that one Smt.G.Prameela and others made a complaint to the respondents alleging that the petitioner has given birth to a third child on 05-05-1997 and thus incurred disqualification under Section 19(3) of the Act. In pursuance thereof, the second respondent issued a show-cause notice dated 14-02-2005 calling upon the petitioner to explain as to why action should not be taken under Section 19(3) of the Act. The petitioner states that he submitted his reply on 23-02-2005 denying the allegations made in the complaint. Thereafter, the impugned order was passed by the 1st respondent on 18-03-2005 holding that the petitioner failed to produce any documentary evidence to substantiate his case as put forth in the reply and to rebut the allegations in the show-cause notice and accordingly declaring that the petitioner is disqualified to hold the post of Upa-Sarpanch. The said order is under challenge in this writ petition.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

It is to be noted that the issue involved in this writ petition is squarely covered by a decision of the Division Bench in W.A.Nos.1537 & 1790 of 2003, dated 21-11-2003 in CHAVA ROSAIAH v. CHINTALA VENKATESWARLU AND ANOTHER. Having considered the scope of Sections 19 and 22 of the A.P. Panchayat Raj Act, in detail, the Division Bench held as under :

> *"… … on literal interpretation, it must be held that Section 22 being only an enabling provision conferring right on such member or Sarpanch who receives an intimation of allegations of his not being qualified or having become disqualified that within two months he can approach the District Court for a decision. It is only on decision being rendered by the District Court holding that a member or Sarpanch is not qualified or has become disqualified then consequential action can be taken. Section 20 operates automatically that a person or member subject to any disqualification specified in Section 19 and subject to Section 22 such member or Sarpanch shall cease to hold office. Opening words of Section 20 "subject to the provisions of Section 22 a member shall cease to hold Office" would rather support the view which we are taking that the disqualifications as specified in Section 19 would operate as a bar against a member or Sarpanch to hold the Office only when there is a decision rendered by District Court as envisaged in Section 22 and not otherwise."*

In the light of the ratio laid down in the said case by the Division Bench, I am of the view that in the absence of any adjudication under Section 22 of the Act, no action can be taken to declare that the petitioner is disqualified and therefore cannot continue in the office. Hence, the 1st respondent ought not to have issued the impugned proceedings holding that the petitioner incurred disqualification under Section 19(3) of the Act and therefore he is not entitled to continue as Upa-Sarpanch. The said impugned proceedings are void and without jurisdiction and cannot be sustained.

Accordingly, the impugned proceedings are set aside and the Writ Petition is allowed. No costs.

20th April, 2005.

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To

1 The District Collector, (Panchayat Wing) Warangal,
2 The District Panchayat Officer, Warangal,
3 The Mandal Parishat Development Officer, M.P. Zaffergadh,

Warangal District.

4 Two CCs to the G.P for Panchayat Raj and Rural Development, High

Court of A.P., Hyderabad(O.U.T).

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